

# **RESOLUTION**

**RE: Hunterdon County Agriculture Development Board  
Determination of Site Specific Management Practices for Stonybrook  
Meadows Farm  
Block 41, Lot 40.05, Township of East Amwell, County of Hunterdon**

## **WHEREAS:**

1. On September 14, 2011, a Site Specific Agricultural Management Practices application was submitted by Ann del Campo and Laura del Campo, on behalf of Stonybrook Meadows, LLC, the owners of Block 41, Lot 40.05, in East Amwell Township, County of Hunterdon, to the Hunterdon County Agriculture Development Board (hereinafter referred to as the “CADB” or “Board”). The applicant sought a determination that would permit Stonybrook Meadows to undertake the following activities:

A. Performance of equine activities, including horsemanship classes, horse auctions, equestrian birthday parties, and Iyengar Yoga classes for equestrians and farmers;

B. Marketing of agriculture products, including farm tastings;

C. Performance of educational forums and events pertaining to certain products which are produced on the farm;

D. Breeding and selling of horses, swine, lambs and other farm animals, and the production of other specialty products on the farm;

E. Increasing the size of the farm infrastructure, including an increase in the size of the existing structures, specifically the expansion of the existing farm market from 250 sq. ft. to 900 sq. ft., and permission to circumvent the requirement of obtaining the Minor Site Plan Approval from East Amwell Township;

F. Erection of hoop style greenhouses on the farm, which would be covered for part of the year, to allow for a longer growing season and increase of agricultural output;

G. Erection of a prep-clean room on the farm which would be subject to approval by the Hunterdon County Health Department. This prep-clean room would be used for the packaging and final baking of herbs, breads and other farm products as well as for demonstrations related to canning, jellies and pickling;

H. Increasing the number of parking spaces by approximately 9 spaces (farm currently has ten (10) existing spaces);

I. Erecting signs on the property's flag lot stem pertaining to the farm market and vehicular traffic guidelines for use of a common driveway.

2. This Board has determined that it has jurisdiction to review this application pursuant to the Appellate decision in Township of Franklin v. David Den Hollander, the Right to Farm Act, N.J.S.A. 4:1C-9 and implementing rule N.J.A.C. 2:76-2.3.

3. On October 13, 2011, the CADB addressed this application and certified Stonybrook Meadows as a commercial farm for a second time. This farming operation was initially certified as a commercial farm by the CADB on October 13, 2005.

4. On November 10, 2011, December 8, 2011, February 9, 2012, March 8, 2012 and April 12, 2012, the CADB conducted a public hearing to determine whether Stonybrook Meadows Farm is entitled to Site Specific Agricultural Management Practices approval for the aforementioned practices requested.

5. Notice of the hearing was published in the Hunterdon County Democrat and served via certified mail to all those living within 200 feet of the farm.

6. At the onset of the hearing and on multiple occasions during the pendency of the hearing, neighbors, Edward and Linda Feinberg, to Stonybrook Meadows, LLC objected to the Board's exercise of jurisdiction in this matter as well as to the adequacy of notice of the hearing provided by the applicant. The CADB rendered an opinion that notice was proper and jurisdiction was vested in the Board. (An explanation of the Board's reasoning for its determination is set forth below).

7. At the hearing, Ann del Campo and Laura del Campo appeared on behalf of Stonybrook Meadows, LLC. No representative for the Township of East Amwell was present at the hearing. Neighboring property owners, Edward and Linda Feinberg, were present throughout the hearing as objectors.

8. The Exhibits introduced at the hearing were marked as follows:

- A-1 SSAMP RTF Form B Application;
- A-2 Commercial Farm Certification Right to Farm Form C;
- A-3 Notice of Public Hearing;
- A-3a Proof of publication and certified receipts;
- A-4 AIM Agriculture in the Middle;
- A-7 Friends in AIM Decline/Why be Concerned about AIM Farms?;
- A-8 NJ Farm Bureaus 2010 Policies;
- A-9 CADB meeting minutes from 11/10/2005;
- A-10 Public Information sheet for Sourland Mountain resource protection;
- A-11 Code of East Amwell/Chapter 110 Right to Farm;
- A-12 Right to Farm Act/N.J.S.A. 4:1c-1, et. seq.
- A-13 SADC status report to the NJ Farm Bureau Convention;
- A-14 Agriculture Smart Growth Plan for NJ;
- A-15 Right to Farm Program fact sheet;
- A-16 Chapter 1 C. Agriculture Development and Farmland Preservation;
- A-17 Agri-Tourism Resources Reviewing the RTF Act and Accepted Management Practices;
- A-18 NJ Farmland Assessment Act;
- A-19 Permaculture Design Certificate;
- A-20 Map-Ag Use 1960;
- A-21 The Soil Profile;
- A-22 N.J.A.C. 7:9B Surface Water Quality Standards;
- A-31 Agri-Tourism in NJ/Signage, Noise and Farm Market;
- A-34 Agri-Tourism in NJ/Examples of Agricultural Tourism Activities;
- A-36 Agri-Tourism in NJ/A Lifeline for Working Farms;
- A-37 Agri-Tourism in NJ/Accepted Management Practices;
- A-38 NJ Agri-Tourism: Farmers;
- A-39 The Missouri Rhine Valley;
- A-40 Outcomes- Medium-Term;
- A-41 Outcomes- Long-Term;
- A-42 Letter to East Amwell Township Richard McManus, Zoning Officer;
- A-43 Antonio and Kim Casola v. Planning Board of Township of Holmdel;
- A-44 Township of Franklin v. David Den Hollander (App. Div.);
- A-45 Township of Franklin v. David Den Hollander (Superior Ct.);
- A-46 Fact Sheet for Commercial Farm Buildings;
- A-47 Preventing Low Back Pain in Agriculture;

- A-48 Yoga;
- A-49 Using the Benefits of Yoga with Children;
- A-50 Low Back Pain and Muscular Skeletal Symptoms Among Kansas Farmers;
- A-51 Yoga for Equestrians;
- A-52 Eight Limbed Yoga for Horse/Rider Harmony;
- A-53 Yoga on Horseback;
- A-54 Ordinance/Farm Building;
- A-55 Fact Sheet for temporary greenhouse;
- A-57 Support of Ag/ 2007: Farm Bill Investing in Agriculture's Future;
- A-58 Farm Description;
- A-59 NH Women in Agriculture;
- A-60 Stonybrook Meadows SSAMP;
- A-61 Working Draft of AG Management Practices for On Farm Direct Marketing Facilities, Activities and Events Request for Comments and Feedback;
- A-62 NJ Farmland Preservation Rule Proposals;
- A-63 Drawing of Existing and Requested Farm Market Structure;
- A-64 Summary of SSAMP requested from CADB.
- F-1 Resume of Edward B. Feinberg, PhD., P.E.
- F-2 Evaluation of Impervious Coverage prepared by Edward Feinberg
- F-3 Response to Stonybrook Meadows SSAMP Application
- F-4 East Amwell Open Public Records Act Request Form
- F-5 Resume of Michael P. Bolan, Professional Planner

9. On the above referenced hearing dates, the CADB considered the following positions of both Stonybrook Meadows, LLC, and the objectors to the application, Edward and Linda Feinberg. The relevant procedural history and testimony given during the hearing and supplied to the CADB for its consideration in this matter is summarized as follows:

### **November 10, 2011 Hearing**

The CADB acknowledged receipt of correspondence from a neighbor, Edward and Linda Feinberg, through their attorney, Jeffery Blumstein, Esq. The Feinbergs objected to the application submitted by Stonybrook Meadows. Mr. Blumstein, appearing on behalf of the Feinbergs, requested an adjournment of the hearing for the

purpose of obtaining additional information about the application so that he could properly prepare opposition on behalf of his clients.

The CADB attorney, as of November 10, 2011, Gaetano M. DeSapio, Esq., indicated that on the day prior to the hearing, the CADB was in receipt of a legal brief prepared by Mr. Blumstein outlining the legal argument in opposition to the application along with a packet of information regarding the Stonybrook Meadows property which was received from the East Amwell Township Zoning Officer.

In response to Mr. Blumstein's request, the CADB adjourned the public hearing regarding the Stonybrook Meadows application in order to afford all parties the opportunity to fully review all information submitted and prepare their respective presentations accordingly. The CADB announced that the public hearing would be continued to December 8, 2011 and advised the applicant that she did not have to re-notice the hearing. The applicant requested possible mediation, and the CADB chairman suggested that the applicant, the objectors and the Township Zoning Officer should be included in any mediation discussions.

### **December 8, 2011 Hearing**

The CADB re-opened the public hearing, indicating that the applicant would give their presentation first, the objector would then be given the opportunity to cross-examine the applicant, and then any objectors or members of the public would be permitted to speak on the record as to their objections to or support for the application.

The objector's attorney, Jeffrey Blumstein, Esq., made an immediate application to the CADB, stating that based on information he received from East Amwell Township, there were several zoning ordinance violations, no recertification of existing water wells

and violations of impervious coverage which were misrepresented and/or withheld from the CADB when the Board made the determination that it had jurisdiction to hear the application. Mr. Blumstein requested that the CADB refrain from proceeding on the application until after the East Amwell Zoning Officer and Township Committee had the opportunity to determine if there were zoning violations, and after the SADC had given more direction on newly proposed farm market regulations.

The applicant informed the CADB that she had not received any notice of zoning violation and that several issues mentioned by Mr. Blumstein would be addressed during the course of her presentation, with supporting documentation. The applicant requested that the CADB proceed with the public hearing.

Mr. De Sapio advised the CADB that it was his opinion that the Board has jurisdiction and could proceed with the public hearing. After a brief discussion, the CADB agreed to proceed with the public hearing.

Ann del Campo and Laura del Campo, the applicants, were sworn in. Ann del Campo gave a brief overview of their presentation in support of their application. The CADB requested proof of publication of notice for the public hearing and the certified mail receipts for the property owners. Ann del Campo testified that she published notice of the hearing in the Hunterdon County Democrat and sent notice via certified mail to all property owners residing within 200 feet of Stonybrook Meadows. The CADB staff indicated that proof of publication and copies of the certified mail receipts was shown at the commencement of the hearing on November 10, 2011. Ann del Campo was instructed to provide a copy of the proofs to the CADB staff on the following day.

Ann del Campo testified that Stonybrook Meadows is a family owned and operated commercial farm built in 1997, and consists of about 19.6 acres. She gave an overview of the farm's operations and farming techniques. Ms. del Campo further testified that Stonybrook Meadows is, in part, seeking a slightly larger farm market and permission to have a year-round port-a-potty. Ms. del Campo introduced a large number of exhibits and in response, the Board decided to adjourn the hearing to February 9, 2012 in order to number and organize the exhibits.

### **February 9, 2012 Hearing**

The CADB continued the Stonybrook Meadows SSAMP application public hearing.

A letter from objector's attorney, Jeffery Blumstein, Esq., was initially considered by the CADB. Mr. Blumstein again addressed the CADB regarding the issues of jurisdiction. Ann del Campo responded by stating that when she purchased Stonybrook Meadows, the subdivided lots were advertised as farmettes and that the purchasers were advised that each lot had the potential to be a farm. Thereafter Ms. del Campo testified that she obtained approvals for her farmhouse and a barn from the Township and applied for and received farmland assessment. Ms. del Campo also stated that she received approvals for other farm buildings from the Township Zoning Officer, and reminded the Board that Stonybrook Meadows was previously designated a commercial farm by the CADB in 2005.

The CADB attorney, as of February 9, 2012, Gaetano M. De Sapio, Esq., advised the Board that it was his opinion that the objector's narrow interpretation of the statute as it related to jurisdiction, "effectively undercuts the whole intent and purpose of the Right

to Farm Law.” Mr. De Sapia specifically stated, “To read the statute to say that a farm had to be in business before 1998, and if you weren’t, you can never be a commercial farm unless the municipality determines that your farm is a permitted use in the zone, implies that nobody would ever be able to come to a CADB meeting and get a determination of the Right to Farm.” Mr. De Sapia advised the CADB that it had jurisdiction to hear the application. He further advised the Board that the New Jersey Legislature defined a conditional use as “a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance, and upon the issuance of an authorization therefore by the planning board.” In reliance on this opinion and advice, the Board elected to proceed with the public hearing on this matter.

Marcia Fisher was then sworn in as a witness for the applicant. Ms. Fisher testified about her family’s involvement with Stonybrook Meadows. Ann del Campo proceeded further with her presentation and testified that she received zoning approvals from East Amwell Township for every commercial building located on the farm and that farmland assessment has been maintained at the property from the first opportunity they had to acquire it. Ms. del Campo testified as to the existing and proposed equine and agricultural activities on the farm, as well as the requests to expand the farm market and have farm tasting and educational events. Ms. del Campo briefly testified to each of the specific requests set forth in her application.

Mr. Blumstein questioned Ann del Campo about various zoning regulations and requirements, including water use issues. The CADB indicated that water issues were



not before the Board for consideration or discussion. Mr. Blumstein then questioned Ms. del Campo about the commercial farm certification, the farmland assessment, signage and the additional requested parking spaces. After a brief exchange of questions from the CADB, the Board requested the applicant to submit a map identifying the proposed location of the additional parking spaces and the hoop house in addition to copies of all permits and approvals obtained by the applicant from the Township. The public hearing was adjourned and continued to the March 8, 2012 meeting.

### **March 8, 2012 Hearing**

The CADB continued the Stonybrook Meadows SSAMP application public hearing.

Jeffrey Blumstein, Esq. reiterated his objection regarding whether proper notice of the public hearing was given to all property owners located within 200 feet of the applicant's property. The applicant stated that proof of proper notice was submitted, and the CADB determined that this issue had been satisfactorily resolved.

Edward Feinberg was sworn in as a witness. Mr. Feinberg outlined the main issues regarding his objection to the application. He cited that proper notice of the public hearing was not given and, therefore, the CADB could not proceed to render a decision on the SSAMP application. Further, he cited his position that Stonybrook Meadows was improperly classified as a commercial farm and was not entitled to Right to Farm protection, and, therefore, the CADB did not have jurisdiction under the Right to Farm Act to hear the application. He argued that the farm did not meet the criteria set forth by the New Jersey Statutes and Regulations for preemption. Mr. Feinberg also challenged the applicant's proof of farmland tax assessment, and argued that agriculture is not a

permitted use in the Sourland Mountain District. In addition, he testified that there had been several zoning violations regarding impervious coverage and water usage.

Linda Feinberg was then sworn in as a witness. She also argued that the applicant is not entitled to Right to Farm protection because agriculture is not a permitted use in the zone, citing, in part, that Stonybrook Meadows was not a commercial farm as of 1998, and the conditional use requirements were never met.

Ms. Feinberg went on to testify that it was her position that farm tastings were a commercial enterprise and, as such, not a generally accepted farm management practice, and that the farm stand should not be permitted to operate because of issues with well certification. Ms. Feinberg testified that none of the SSAMP requests were ripe for consideration because, in her opinion, Stonybrook Meadows did not qualify for Right to Farm protection.

The CADB adjourned to permit new CADB counsel, Shana L. Taylor Esq., to re-evaluate the issues of notice and jurisdiction for the Board. The hearing was continued to April 12, 2012.

#### **April 12, 2012 Hearing**

The CADB continued the Stonybrook Meadows SSAMP application public hearing. Edward and Linda Feinberg again reiterated their objections based on the Board's certification of Stonybrook as a commercial farm, improper Notice of the Public Hearing and lack of jurisdiction. In addition, the Feinbergs presented testimony from a professional planner, Michael Bolan, who explained the zoning districts in East Amwell Township and offered his opinion that agriculture is a conditional use in the area of the Township where Stonybrook Meadows Farm is located.

When testimony from the parties was concluded, the Board accepted public comment. The Board then closed the public hearing and deliberated in public with regard to each of requested Site Specific Agricultural Management Practices requested in the application.

10. At the outset of its deliberations, the Board reiterated that it had previously determined that jurisdiction existed to hear this matter based on the CADB's certification of Stonybrook Meadows, LLC as a commercial farm both in 2005 and 2011. The Board addressed the primary objections of Edward and Linda Feinberg related to improper classification as a commercial farm, improper notice and lack of jurisdiction, and reviewed the opinions given by the Board's farm counsel, Gaetano M. De Sapio, Esq., and the re-evaluations of that opinion from its new counsel, Shana L. Taylor, County Counsel.

The Board determined that Stonybrook Meadows was a commercial farm, proper Notice of the public hearing was given, and that it had jurisdiction to hear the application basing its determination on the following:

A. COMMERCIAL FARM CERTIFICATION - In 2005, the CADB certified Stonybrook Meadows as a commercial farm in connection with a Right to Farm application submitted at that time. In 2011, upon receipt of Ms. del Campo's SSAMP application on behalf of Stonybrook Meadows, the Board made the same determination prior to scheduling a public hearing on this matter. Ms. del Campo testified and furnished proofs that her operation met the required economic standard. The farm consists of 19+ acres, of which 18 acres are dedicated to agricultural and/or horticultural uses. She provided documentation regarding her farming income and farmland tax

assessment for 2011, her application for 2012, as well as several additional years of proof of income. The CADB properly certified the property as a commercial farm on October 13, 2011, before it scheduled a public hearing on the SSAMP application.

B. NOTICE - The CADB informed all parties at the outset of the hearing that the applicant provided proper notice of the public hearing in accordance with the CADB requirements. The applicant published notice of the public hearing in the Hunterdon County Democrat at least ten (10) days prior to the initial hearing date, and mailed notice of the hearing, via certified mail, to all properties located within two (200) feet of her property. Ms. del Campo also served notice on Comcast, JCP&L, PSE&G, the Hunterdon County Planning Board and the NJDOT Commissioner. The CADB determined that this constituted sufficient notice to commence the hearing on November 10, 2011.

C. JURISDICTION - The CADB determined that jurisdiction was properly vested in the CADB based on the following analysis. Stonybrook Meadows farm qualifies to receive Right to Farm protection because the farm meets at least one of three criteria set forth in N.J.S.A. 4:1C-9, which requires:

1. The commercial farm to be located in an area in which, as of December 31, 1997 or thereafter, agriculture is a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan; or,

2. the commercial farm to be in operation as of the effective date of July 3, 1998, and the operation conforms to agricultural management practices recommended by the committee and adopted pursuant to the provisions of the Administrative Procedures Act; or,

3. *the commercial farm, whose specific operation or practice, has been determined by the appropriate county board to constitute a generally accepted agricultural operation or practice, and all relevant federal or State statutes or rules and regulations adopted pursuant thereto, and which does not pose a direct threat to public health and safety.*

The CADB certified this farm as a commercial farm on two separate occasions. The third criterion of NJSA 4:1C-9 is applicable to the situation at issue with Stonybrook Meadows. This criterion set forth above cites no specific effective zoning date, nor whether agriculture must be a “permitted use”. This third criterion is a mechanism for affording farms Right to Farm protection for those commercial farms which fall outside the first two criteria.

In addition, upon examination of the relevant Municipal Land Use Law, the New Jersey Legislature defined a conditional use as “a use permitted in a particular zoning district only upon a showing that such use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance, and upon the issuance of an authorization therefor by the planning board.” N.J.S.A. 40:55D-3.

A conditional use is, on its face, a permitted use, so long as the conditions are clearly set forth in the zoning ordinance. In this matter, proof has not been provided to the Board to demonstrate that Stonybrook Meadows received written conditional use approval/authorization from East Amwell Township. However, in the absence of a written determination granting such conditional use approval, Ms. del Campo testified that Stonybrook Meadows has, over the years, received multiple permits from the Township on separate occasions for her agriculture and farm related activities on the farm, including permits for her greenhouse. Therefore, the Board has concluded that municipal approval was impliedly granted based on the municipality’s repeated practice of issuing permits for her farming operation. In addition, the Township has raised no objection to this application.

New Jersey Administrative Code, N.J.A.C. 2:76-2.3 provides that commercial farm operators/owners may seek a determination that their operations constitute generally accepted agricultural operations or practices, provided they meet eligibility criteria pursuant to N.J.S.A. 4:1C-9. This Regulation states that in making the determination whether the criteria of N.J.S.A. 4:1C-9 is met, the Board *shall request*:

1. Proof that the commercial farm is no less than 5 acres, produces agricultural and/or horticultural products worth \$2,500 annually and is eligible for farmland tax assessment; or if the commercial farm is less than 5 acres, produces agricultural and/or horticultural products worth \$50,000 or more annually and is eligible for farmland tax assessment; and

2. Proof that the farm is located in an area in which, as of December 31, 1997 or thereafter, agriculture has been a permitted use under the municipal zoning ordinance and is consistent with the municipal master plan, or which commercial farm was in operation as of July 2, 1998.

The Feinbergs have argued that the applicant has failed to comply with the criterion set forth above, and this prevents the CADB from rendering a decision for this SSAMP application. However, this Regulation states that the Board *shall request* certain information. This information is then to be used by the Board to determine whether the applicant meets the criteria set forth in N.J.S.A. 4:1C-9. The Regulation does not preempt the terms of N.J.S.A. 4:1C-9, nor does it prohibit the Board from proceeding with a Right to Farm hearing if it determines that a farm satisfies the eligibility criteria if it was previously certified by a County Board to be a commercial farming operation. The Regulation states clearly that the farm must meet the eligibility criteria of the statute. The Board determined that the requirements of N.J.S.A. 4:1C-9 were satisfied by the applicant, and that it had proper jurisdiction to hear the application.

**NOW, THEREFORE, BE IT RESOLVED THAT THE HUNTERDON COUNTY AGRICULTURE DEVELOPMENT BOARD MAKES THE FOLLOWING FINDINGS OF FACT.**

1. The CADB has rendered a decision with regard to each specified Site Specific Agricultural Management Practice as follows:

A. Applicant's request to perform equine activities including horsemanship classes, horse auctions, equestrian birthday parties (up to three per month) is approved. The request for approval to perform Iyengar Yoga classes is denied.

B. Applicant's request to perform marketing of their agriculture products including farm tastings, is approved. However, the number of those tasting events shall not exceed fifteen (15) per year and must occur at a frequency which does not exceed two (2) per month.

C. Applicant's request to provide educational forums and events pertaining to certain products which are produced on the farm is approved.

D. Applicant's request to breed and sell horses, swine, lambs, rabbit, poultry, goats and other farm animals as requested, as well as produce specialty products on the farm, is approved on the condition that Stonybrook Meadows comply with New Jersey and Local Waste Management rules. Further, the applicant must specifically seek permission from the CADB, when she wishes to breed and sell farm animals which were not specifically approved by the Board.

E. Applicant's request to increase the size of the farm infrastructure, including an increase in the size of the existing buildings, specifically the expansion of the farm market from 250 sq. ft. to 900 sq. ft., without acquiring minor site plan approval from East Amwell Township is denied. The CADB indicated that the Board wished to

rely on the existing township approval for this structure and as such rendered no additional approval for its existence.

F. Applicant's request to erect hoop style greenhouses to allow for early and later season growing and increase the agriculture output of the farm is approved with the condition that the Applicant obtain any necessary Township approvals for the erection of such structures.

G. Applicant's request to erect a prep-clean room is granted, with the condition that the applicant obtain all necessary approvals from the Hunterdon County Health Department.

H. Applicant's request to increase the number of existing parking spaces on her property by approximately 9 spaces (farm has existing 10 spaces) is granted, subject to the provisions of the Draft AMP for On-Farm Direct Marketing Facilities, Activities and Events which is attached and incorporated into this Resolution as Exhibit A.

I. Applicant's request to erect additional signage on the property's flag lot stem is approved, with the condition that the applicant comply with the applicable provisions of the Draft AMP for On-Farm Direct marketing Facilities, Activities and Events (Exhibit A).

2. This determination shall be forwarded to the State Agriculture Development Committee within thirty (30) days, pursuant to N.J.A.C. 2:76-2.3(e).

3. Any person aggrieved by this decision, may appeal to the State Agriculture Development Committee, pursuant to N.J.A.C. 2:76-2-3(f).

## HUNTERDON COUNTY AGRICULTURE DEVELOPMENT BOARD



Dated:

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DAVID BOND, CHAIRMAN